



KU LEUVEN

MONEY TALK

Comparing and discussing good criteria for disclosure of financial business information to employee representatives in Europe

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Synthesis report

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INTRODUCTION

Information about a company's economic and financial situation could be an important tool for the work of employee representatives across Europe. The EU Directive 2002/14/EC, which sets general standards in terms of information and consultation, grants employee representatives the right to be informed about the company's economic situation. The provisions of this EU Directive have been translated to national law in all member states, and therefore, employee representation bodies all over Europe should in principle be able to access economic and financial information (EFI) of the company they work for. In order to get more insights on how the provision of EFI works in practice, the EZA seminar "Money talk" brought together national experts and employee representatives from various European countries (Belgium, the Netherlands, Germany, France, Norway, and Poland) to engage in a constructive and insightful debate. On the one hand, this debate was stimulated by expert presentations on the regulation governing the provision of EFI in different countries. On the other hand, focus group discussions including employee representatives from different countries (i.e. Belgium, the Netherlands and Poland) and three multinational companies created valuable insights in the practical functioning of the provision of EFI.

The expert presentations revealed the limited impact of the Directive 2002/14/EC on most countries, as more extensive regulation was already in place before the conclusion of the Directive in most of the countries investigated in the seminar (with the exception of Poland). In other words, the Directive defines a bottom line, but most countries' levels of regulation on information and consultation, and the provision of EFI, go beyond this bottom line.

The focus group discussions stressed that in Belgium and the Netherlands, the provision of EFI works well in practice. This is different in Poland, where formal procedures still need to be developed. Moreover, the discussions highlighted the importance of involving experts in the interpretation of the provided EFI. Although such experts are frequently involved and play an essential role in understanding the provided data, the use of the data by employee representatives still seems to be limited. While there is a general consent about the importance of EFI to understand the economic situation of the workplace/company, such information is not (yet) actively used in collective bargaining.

AN OVERVIEW OF NATIONAL REGULATION

Germany

The German institutional system foresees two channels for the provision of EFI: the works council and board-level employee representation (BLER). Firstly, works councils have very strong information rights with regard to the provision of EFI (based on the Work Constitution Act of 1952). In companies with more than 100 staff and a works council, a so-called finance committee can be established, which meets once a month with company representatives. This committee is entitled to get extensive EFI, and

the regular meetings guarantee a continuous dialogue between employee and employer representatives. In companies without a finance committee (less than 100 staff), the works council receives EFI once per quarter. In general, works councillors have the right to participate in trainings (paid by the employer) which are necessary for their function. There is no rule defining the maximum amount of days of employer-paid training per year. Furthermore, works councils can make use of external experts to make sense of the received EFI – also this needs to be paid by the employer. Secondly, the German legislation foresees BLER in large companies (more than 500 staff) with two-tier board systems. Depending on the legal form of a company and the number of staff, employee representatives get a certain number of seats (parity, quasi-parity or one-third) in the supervisory board. Participation in the supervisory board can be considered as an additional source of information for employee representatives, that could for instance be used to verify the information provided to the finance committee. Employee representatives dealing with EFI are generally bound to strict confidentiality rules; possible conflicts can be brought before a special conciliation committee. Overall, while the German system provides extensive rights on receiving EFI, the provision of information depends to a large extent on the existence of a works council. In companies without works council (mostly small companies with less than 50 employees), the provision of EFI cannot be guaranteed.

France

In France, the works council is the main channel for the provision of EFI. Works councils (established in firms with more than 50 staff) have extensive information and communication rights that need to enable them to understand company developments, and there is detailed and precise regulation on receiving EFI. This regulation foresees the annual, periodic and ongoing provision of certain economic and financial information. In addition, EFI must be provided prior to restructuring measures. While the information right is extensive, it does not include data on the remuneration of executives. Based on the provided information, works councils have the right to start an alert procedure ('right of warning') if the company's economic situation is worrying to them. Starting this procedure implies calling external experts to evaluate the company's economic and financial situation. Generally, in order to make sense of the provided EFI, works councillors in France can follow training paid by the employer five days per year. According to a recent survey of IRES (*Institute for Economic and Social Research*), the main challenge employee representatives face is the interpretation of the received EFI. This does not only stress the importance of training, but also the role of external experts that can be consulted if support is needed. In this respect, works councillors can make use of an accountant to evaluate the company's economic and financial performance (paid by the employer). Furthermore, the French regulation also foresees strict confidentiality rules, especially with regard to business and trade secrets. Recently, BLER has been a controversially discussed topic in France. While BLER is compulsory in state-owned firms (employee representatives make up to one third of a board, acting as full members), the situation is different in private companies. In such companies, as small number of works council members can attend board meetings, but the purpose of participation is information and to a lesser extent, consultation. In sum, while the French system foresees many information and consultation rights,

employee representatives seem to have little influence on strategic decisions. This is because the result of consultations is mostly not binding.

The Netherlands

The Dutch regulation foresees works councils as employee representation bodies at company level (established in the majority of the companies with at least 50 employees). Works councils are formally independent from trade unions and have a range of information and consultation rights based on the Works Council Act, which establishes three main types of rights for works councils: information rights, consultation rights and approval rights. Information rights can be active or passive. Passive information rights contain the provision of information and data by the employer on a range of economic and financial issues, such as the legal form, structure and organisation of the company, and its links with other businesses. Furthermore, information needs to be provided with regard to the general operation of the company and its economic and financial performance (annual basis), on the expectations with respect to (future) planned activities and investments (bi-annual basis). In contrast to these passive information rights, the works council has an active right to ask for all the information deemed necessary to carry out its tasks. These active information rights are broadly defined in the legislation; therefore, they potentially enable works council members to access a lot of (economic and financial) information. The regulation also incorporates information and consultation rights in any decision related to major investments, loans, take-overs or other important changes in a company's activities. To enable the works councils to seek advice on these decisions, all necessary information needs to be provided prior to the formal meeting with management. Yet, the result of the consultation is not binding for the employer, but its aim is to achieve a mutual agreement. Finally, the approval right rules that changes on various social issues and employee issues need to be approved by the works council. Overall, such information rights are bound to a confidentiality clause. In order to empower works council members to interpret the provided EFI, the Dutch law foresees a general right allowing for five days of training per year, paid by the employer. In sum, the Dutch regulation grants extensive information rights. According to the expert, the provision of information works well in practice. However, the foreseen rights are hardly used to their full extent. The active information right, for instance, which requires works councils to take the initiative and ask for additional information is only rarely used.

Norway

In Norway, there are three channels of employee participation, which are related to the provision of economic and financial information. (1) If no employee representation body is present (i.e. no trade union and no BLER), the Working Environment Act applies, covering companies with at least 50 staff. The Working Environment Act provides information and consultation rights concerning the current and expected development of the company's activities and economic situation on which the employer may impose a duty of secrecy. (2) In unionized companies, the so-called Basic Agreement and collective agreements take precedence over the Working Environment Act. The Basic Agreement is re-negotiated at the national level every four years in order to keep it up to date with labour market developments.

The Basis Agreement contains extensive information and consultation rights, also covering EFI. Confidentiality rules apply but are also less strict compared to for instance the Netherlands. Trade unions – as main employee representation body – have to be informed and consulted prior to any decision on matters concerning employees' jobs and working conditions. The company also needs to provide information and consult the trade union on all matters relating to the company's economic and financial performance, production-related issues, and restructuring. After being informed by management, the union can consult external experts that will be granted access to the necessary information. Furthermore, companies with more than 100 employees can establish a works council as additional employee representation body, which is elected by all employees. According to the Basic Agreement, works council activities should be specified in a detailed local agreement. But even without such an agreement, works councils have information rights regarding EFI, and are consulted on issues potentially influencing employees and their working conditions. Overall, the Basic Agreement is an extensive and important tool regarding EFI, but variation in its use exists at the workplace level, especially because of union strength, which differs across workplaces and sectors. (3) The Norwegian company law specifies the right to demand BLER in all companies with more than 30 employees. Board members among the employees (which are often linked to and/or supported by trade unions) are elected by a company's workforce. Elected employee representatives in the board have the same rights and duties as representatives of the company. The number of companies using BLER is rather small. According to the expert, this is not because of managerial resistance, but rather because BLER needs to be formally demanded. Linked to that, the already foreseen information channels (especially the Basic Agreement) grant extensive information rights, so most local unions do not see the necessity of an additional information channel. Overall, the Norwegian system foresees extensive EFI rights through different channels. According to the expert, the full potential of these rights is not yet used, seen the fact that BLER exists only in a limited number of companies.

Poland

The Polish system foresees company-level employee representation via two channels: works councils and trade unions. Although union membership in Poland is relatively low, local unions are the main body of employee representation in workplaces/companies. Since the implementation of the EU directive 2002/14/EC on information and consultation in 2006, companies with more than 50 staff can also set up works councils. Shortly after the implementation of the Directive, the number of works councils increased significantly, but this dropped again sharply in 2008 after a ruling of the constitutional court, stating that the established election scheme was unconstitutional. In accordance, works council members would need to be elected by the whole workforce instead of being selected by the trade unions. As a result, only a tiny number of companies have works councils nowadays. Works councils generally have limited rights regarding the provision of EFI and being consulted on employment and work organisation issues. The Polish regulation generally foresees what is specified in the Directive 2002/14/EC. Apart from works councils, trade unions also have a right to information at the workplace/company level. At the request of the trade union, the employer is obliged to provide information necessary to conduct trade union activities. This includes information related to working

conditions and remuneration policies, to the company's economic situation and to (future) employment figures. However, according to the expert, local unionists face constraints in using this information. This is because training provision in general, but especially on EFI, is very limited as unions lack the financial resources to offer training. At the same time, the use of external experts that could help to make sense of the provided data is constrained by these limited financial resources, too. In sum, the provision of EFI in the Polish contexts depends to a large extent on the presence of employee representation bodies in the workplace. In companies without works council and trade unions, employees have no explicit right to receive EFI. Yet, information and consultation is currently being discussed in Poland, and the existing regulation is under scrutiny. In the near future, changes are likely to be made.

Belgium

In the highly structured industrial relations system in Belgium, workplace-level employee representation is realized through works councils and trade unions. The works council, which has to be established in companies with more than 100 employees, consists of members from both employer and employee side. Thereby, employee representatives in the works councils are mostly linked to the relatively powerful trade unions. In general, Belgian works councils have extensive rights to receive EFI. The provided information should enable works councillors to get a clear picture of the company's economic situation, as well as its evolution and prospects. The legislation distinguishes four types of information: (1) basic information; (2) annual information; (3) periodic information (quarterly); (4) occasional information (if decisions are taken that have important consequences for the firm and its employees, mostly linked to restructuring decisions, and mergers and acquisitions). Employee representatives have the right to consult experts for getting additional interpretations, insights and analyses of the provided EFI. These experts are also allowed to attend works council meetings. According to the national expert, local employee representatives frequently consult financial experts working for the national unions. In addition, the company's external auditor/accountant has particular duties towards the works council. He/she has to certify the information provided by the company and has a pedagogical role to play towards the works council. Besides, the Belgian legislation foresees five days of training a year for employee representatives. Thereby, seminars and workshops on EFI are offered by the national unions. In sum, there are extensive rights with regard to EFI in Belgium. However, according to the national expert, the use of this EFI does not seem to be a priority for the Belgian trade unions yet, as their work is rather focused on traditional issues related to working conditions and pay issues.

EMPLOYEE PERSPECTIVES ON THE PROVISION OF FINANCIAL INFORMATION

In order to learn more about the experiences of employee representatives with regard to the provision of financial information, focus group discussions were organised on the second day of the seminar. These discussions lasted for two hours and involved employee representatives from Belgium, the Netherlands and Poland. Focus group 1 was carried out with representatives from a large multinational

in the food sector (two Belgian, two Dutch and one Polish representative). Moreover, a Dutch expert on the provision of economic and financial information took part. Focus group 2 consisted of employee representatives of two multinationals, one in the manufacturing (one Dutch, one Belgian representative) and one in the healthcare sector (one Belgian, one Polish representative). Furthermore, a Polish and a Norwegian expert on the provision of economic and financial information participated. Both focus groups also included a moderator as well as a minute taker. They followed the same pre-defined semi-structured discussion guideline to ensure some comparability across focus groups.

The provision of EFI

The formal and informal procedures of EFI provision differ between countries and in accordance with national regulation. The focus group discussions also revealed differences across companies operating in the same country, especially with regard to informal procedures. While the provision of EFI seems to be adequate and in accordance with regulation in Belgium and the Netherlands, there is mixed evidence for the Polish case.

The Belgian employee representatives receive EFI annually, and in some cases, less extensive information is provided even quarterly or monthly. About ten to fourteen days before the annual, formal meeting, employee representatives receive all economic and financial information, so that they can prepare for the meeting and consult an expert who helps making sense of the provided data and who evaluates the company's economic and financial situation. In all Belgian cases, local employee representatives do not rely on external experts, but on experts working for the trade union. Moreover, there are informal channels of receiving EFI – for instance, several Belgian representatives stressed that due to their trustful and good relationship with management, they could always ask management to get further information, and in almost all cases, they would get it.

In the Netherlands, in one case, EFI is formally passed on in an annual meeting (as well as in two-monthly meetings, but based on less extensive information provision), and in bi-annual meetings in the other case. These meetings provide an overview of the company's economic and financial performance in the Netherlands. Informal information channels exist as well, although in one of the multinationals, employee representatives pointed out the difficulty of receiving further information due to the fact that the national manager may not possess the demanded information. The manager would need to get in touch with the headquarters, but it is by no means guaranteed that he or she would obtain the requested information. In the other company, the usefulness of informal channels especially depends on the relationship with managers. In the case of good and trustful relations, these channels tend to be useful. Furthermore, the use of external experts is similar across companies. In one company, a separate finance committee exists, consisting of three works councillors that followed a specific training on economic and financial issues. Therefore, external experts are not needed for the (bi-) annual meetings. However, in case of restructuring, an external expert would most likely be consulted. Similarly, the second company has well-trained experts on EFI among works councillors, and therefore, external experts are hardly used.

In Poland, there are different situations in the two investigated companies. One company does not have a works council, so workers are solely represented via the trade union. Although trade unions get some EFI, there are two interrelated problems. Firstly, the information is presented at a formal meeting, but is not passed on to the unions prior to it. For this reason, preparation is hardly possible. Secondly, the trade union funds for training or consulting external experts are very limited, which means that local employee representatives face problems in interpreting the received EFI. In the other company, a works council exists, and trade unions are active as well. Even though the company is not forced to provide EFI (only data that are relevant for the functioning of employee representation bodies need to be provided), the works council receives some economic and financial data every quarter. Yet, difficulties in interpreting this data exist, too, as the aforementioned problems with regard to the limited funds for training apply as well.

Overall, EFI is provided on a regular base through formal channels. Apart from the Polish case, which is to some extent mixed, the provision of EFI seems to work well in practice. In all investigated countries, there are strict confidentiality rules, but employee representatives did not report any problems on this issue.

How do local employee representatives use EFI in their daily work?

In most cases, receiving EFI seems to work well. But how do employee representatives actually use the gathered information? To what extent is this information useful for their daily work?

In Belgium, EFI is analysed to get a view on the economic and financial performance of the company. This is especially important for keeping track on and discussing future investments. Furthermore, in one company, employee representatives' monitoring of production and sales volumes is used as input for own calculations on the future number of employees needed. So if management wants to cut jobs, employee representatives could intervene based on their calculations (forecasted staff demand) and try to avoid redundancies.

In the Netherlands, one company uses the provided EFI as important input for staff planning. Based on forecasted production volumes, the works council could push for hiring additional staff (economic upturn) or for keeping as many employees as possible (economic downturn). Furthermore, EFI provides interesting insights for the works councils regarding mergers and acquisitions.

In Poland, in the company without works council, the received EFI is not used in the daily trade union work. It serves as pure information input about the produced volumes. The main reason for not doing more with the provided data is the difficulty of interpreting it, which again results from the lacking financial resources for training on EFI and consulting external experts. There is no data with regard to the other company.

In sum, there are differences across companies and countries regarding employee representatives' use of EFI. Yet, it is remarkable that the provided EFI mainly fulfils the purpose of information, but it is hardly used, for example, as input for collective bargaining (e.g. regarding wage demands).

How do employee representatives generally evaluate the provision of EFI?

The general evaluation about the provision of economic and financial information is positive across companies and countries. Satisfaction levels are particularly high among the Belgian and Dutch employee representatives, and again, there is mixed evidence for Poland (positive evaluation in the company with works council, mixed evaluation in the one without works council). Yet, there is concern especially among the Belgian and Polish representatives with regard to the current political climate and the general weakening of trade unions. Therefore, ways need to be found ensuring that the regulation regarding the provision of EFI remains unchanged despite the current pressures.

In terms of potential for improvement, two issues need to be mentioned. On the one hand, nearly all employee representatives stressed the importance of training. While the Polish representatives would be in favour of receiving employer-paid training like in other European countries, the Belgian and Dutch representatives opt for keeping the system as it is. On the other hand, some employee representatives stressed the need of not only receiving national, but also international EFI. This would allow them to monitor developments within the whole multinational company, and not only within their own country or Europe (if there is a European Works Council). According to the representatives, this could be used as a tool to avoid benchmarking and coercive comparisons across sites of the same multinational company, and to strengthen the collaboration of trade unions across national borders.

CONCLUSIONS

The EZA-seminar created valuable insights into the provision of EFI across different European countries. On the one hand, information on the legal regulation was given by various European experts. On the other hand, employee representatives from three countries (Belgium, the Netherlands and Poland) and three multinationals shed light on the practical functioning of the provision of EFI. Overall, the provision of EFI works well in most countries and in accordance with the established regulation. The only outlier is the Polish case which presents mixed evidence with regard to the current regulation and the experiences of employee representatives. However, the relevant regulation is currently reworked and changes are likely to occur in the near future. Furthermore, two issues evolved during the seminar that may be interesting starting points for future seminars on the provision and use of EFI.

Firstly, the employee representatives uniformly emphasized the importance of training and the involvement of (external) experts with regard to EFI. Due to the high complexity of financial information, trainings on EFI are a crucial tool to empower employee representatives to make sense of the provided information. Furthermore, nearly all employee representatives use the support of experts to interpret the provided EFI. Hence, financial support and days off for training initiatives, as well as for making use of experts can be considered an essential success factor enabling employee representatives to make sense of EFI. Yet, it is surprising that employee representatives – despite training provision and the support of experts – hardly make use of the provided EFI in their daily work. EFI is mainly seen as useful information, but not as a potential input for collective bargaining. Therefore, future trainings and

debates within trade unions may not only focus on making sense of financial and economic information, but also on the subsequent step, i.e. how to use the provided information, for instance in collective bargaining.

Secondly, the structures of multinational companies are complex, and this complexity may also affect the provision of EFI. On the one hand, there may be cases in which multinational companies have more than one subsidiary per country, and probably, if all subsidiaries have their own employee representation bodies, there may be even a country-level employee representation body. Such structures may evoke questions with regard to the right level of EFI-provision. On the other hand, some subsidiaries may even be too small to reach employment thresholds needed to establish employee representation bodies (this is of course a general problem that could lead to representation gaps in small- and medium-sized companies). Furthermore, especially focus group 1 brought up the issue of receiving EFI not only for the national, but also for the international level. While national EFI is generally considered as useful, international EFI may be a tool to better understand (re)location decision, for instance. Some unionists also pointed out that this may facilitate the international collaboration among trade unions from different countries representing workers in the same multinational company.

Overall, the seminar shed light on various facets of the provision of economic and financial information to employee representatives around Europe. It also stressed that this is a highly dynamic topic in various ways. On the one hand, the corresponding regulation is currently subject to change in some countries, or such changes are at least discussed. On the other hand, the ways in which employee representatives make use of the provided economic and financial information may evolve over time and be extended in the future. Besides better use and training, the following 'best practices' should be investigated when making a plea for a 'better' disclosure of economic and financial information to employee representatives (as supported by among others European directives):

- Participation in the supervisory board can be considered as an additional source of information for employee representatives (Germany);
- An alert procedure ('right of warning) for the employee representatives if the company's economic situation is worrying to them. Starting this procedure implies calling external experts to evaluate the company's economic and financial situation (France);
- An active right of the employee representation to ask for all the information deemed necessary to carry out its tasks (the Netherlands).
- External auditors of especially stock market-listed companies that have to play a controlling, monitoring and pedagogical role towards the employee representation in the disclosure process (Belgium).

For further information on the seminar, please see <https://hiva.kuleuven.be/nl/nieuws/nieuws-items/eza-seminary-money-talk-presentations-20161121>.

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